

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

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|----------------|---|----------------------------|
| BRICE GLASGOW, |) | No. C 07-1851 MJJ (PR) |
| |) | |
| Petitioner, |) | ORDER TO SHOW |
| |) | CAUSE; GRANTING |
| v. |) | LEAVE TO PROCEED IN |
| |) | FORMA PAUPERIS |
| BEN CURRY, |) | |
| |) | |
| Respondent. |) | (Docket No. 2) |
| _____ |) | |

Petitioner, a California prisoner, filed this pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging the decision by the California Board of Prison Terms ("Board") finding petitioner unsuitable for parole. Petitioner has paid the filing fee.

BACKGROUND

In 1981, in Santa Clara County Superior Court, petitioner pled guilty to charges of first degree murder, and was sentenced to a term of 25 years to life in state prison. In 2005, the California Board of Prison Terms (the "Board") found him unsuitable for parole. He challenged this decision unsuccessfully in habeas petitions filed at all three levels of the California courts.

DISCUSSION

A. Standard of Review

This Court may entertain a petition for writ of habeas corpus "in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a);

1 Rose v. Hodges, 423 U.S. 19, 21 (1975). A district court shall "award the writ or issue an
2 order directing the respondent to show cause why the writ should not be granted, unless it
3 appears from the application that the applicant or person detained is not entitled thereto." 28
4 U.S.C. § 2243.

5 B. Legal Claims

6 Petitioner claims that the Board violated his right to due process because the decision
7 to deny him parole, was not based on at least "some" evidence bearing any indicia of
8 reliability.

9 **CONCLUSION**

10 For the foregoing reasons,

11 1. The Clerk of the Court shall serve by certified mail a copy of this order, and the
12 amended petition and all attachments thereto, upon respondent and respondent's attorney, the
13 Attorney General for the State of California. The Clerk shall also serve a copy of this order
14 on petitioner.

15 2. Respondent shall file with the Court and serve on petitioner, within 90 days of
16 the date this order is filed, an answer conforming in all respects to Rule 5 of the Rules
17 Governing Section 2254 Cases, showing cause why a writ of habeas corpus should not be
18 granted based on the cognizable claims described above. Respondent shall file with the
19 answer and serve on petitioner a copy of all portions of the state trial record that have been
20 transcribed previously and that are relevant to a determination of the issues presented by the
21 petition.
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23 If petitioner wishes to respond to the answer, he shall do so by filing a traverse with
24 the Court and serving it on respondent within 30 days of his receipt of the answer.

25 3. Respondent may, within 90 days of the date this order is filed, file a motion to
26 dismiss on procedural grounds in lieu of an answer, as set forth in the Advisory Committee
27 Notes to Rule 4 of the Rules Governing Section 2254 Cases. If respondent files such a
28 motion, petitioner shall file with the Court and serve on respondent an opposition or
statement of non-opposition within 30 days of receipt of the motion, and respondent shall file

United States District Court

1 with the Court and serve on petitioner a reply within 15 days of receipt of any opposition.

2 4. Petitioner is reminded that all communications with the Court must be served
3 on respondent by mailing a true copy of the document to respondent's counsel.

4 5. It is petitioner's responsibility to prosecute this case. Petitioner must keep the
5 Court and respondent informed of any change of address and must comply with the Court's
6 orders in a timely fashion. Failure to do so may result in the dismissal of this action for
7 failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b).

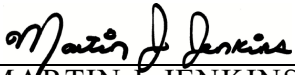
8 6. Upon a showing of good cause, requests for a reasonable extension of time will
9 be granted as long as they are filed on or before the deadline which they seek to extend.

10 7. In light of petitioner's lack of funds, the application to proceed in forma
11 pauperis is GRANTED.

12 This order terminates Docket No. 2.

13 IT IS SO ORDERED.

14 DATED: 7/24/2007

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16 MARTIN J. JENKINS
17 United States District Judge
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19 **United States District Court**
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